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ABSTRACT

Because of the radical variance in residency requirements from state to state and sometimes from institution to institution, and because of several court cases involving this issue, the Education Commission of the States appointed a Committee to develop (1) a statement of principles for consideration in drafting legislation in connection with student residency and (2) sample model legislation incorporating these principles. The basic principles include: (1) setting basic qualifications for attaining residency status that reflect the basic qualifications of legal age and length of domicile in the state required of voters in that state; (2) providing a procedure whereby students who do meet these qualifications can earn residency status even though they may be currently enrolled; and (3) authorizing governing boards or other concerned agencies to enter into reciprocal agreements with similar agencies in other states for the exchange of students across state lines. The model legislation includes sections on: legislative intent; definitions; presumptions and rules for determination of status; regulations and appeal; waiver of tuition; quotas, standards, etc.; reciprocal agreements; and repeals. (AF)

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The primary work of the ad hoc group is to recommend to the governor and legislature the organization structure for coordination of all of education, and the boards, agencies, and institutions which are to have the ongoing responsibilities for developing and implementing educational plans. Its work should be limited to the review of the structures and processes for planning and should not involve the content of plans. Recommendations may be made for abolishment, consolidation, or creation of boards, agencies, and commissions which govern, supervise, or coordinate education. Roles, functions, powers, and duties should be assigned in such a manner as to fix responsibility and to hold accountable specific agencies for planning and implementation of all or parts of the planning. The ad hoc group should also recommend the composition of membership on such board(s) and agency(ies) as it proposes for ongoing planning and implementation.

As a natural part of its function the ad hoc group should be particularly concerned with evaluation of the effectiveness of the planning processes in use and to recommend their improvement. Such an ad hoc group should be created on an occasional basis, perhaps every seven to ten years. The duration of the evaluating process by the ad hoc group should normally be completed within one year and should not exceed 18 months.

Section IV: Unfinished Business.

The primary concern of this Task Force has been with state and federal responsibilities in support of statewide planning for postsecondary educa- orce has not addressed it- dination and governance, of the Task Force are of coordination and gov- related to effectiveness

Force is cognizant of the existing in the states at the present time and of what appears to be something of a trend in the direction of comprehensive governing boards for all of public postsecondary education and in some cases for all of education. Quite apart from the general need for statewide planning, the trend towards centralization makes particularly urgent a more thorough consideration of the alternate forms of coordination and governance and of their various advantages and limitations. The problem is not only sufficiently acute but sufficiently wide in scope to call for an additional task force with broader representation (including at least some representation from elementary-secondary education) to focus attention specifically on the problems of coordination, governance, and structure of public postsecondary education, including its relation to elementary-secondary education and to private higher education.

Accordingly, this Task Force recommends to the Education Commission of the States that such a task force on coordination, governance, and structure or other appropriate group be established as soon as possible with a specific charge to weigh the implications, advantages, and limitations of alternate forms of coordination, governance, and structure.

While the primary responsibility for comprehensive planning for postsecondary education rests with the states, the Task Force is also aware of the importance of regional and national planning. A number of proposals have appeared in recent years for various types of national higher educational planning agencies, including the possibility that the proposed National Foundation for Higher Education assume some responsibilities of a national planning agency. While concern with regional and national planning is beyond the scope of this Task Force, this Task Force recommends that the Education Commission of the States turn its attention to the problems of such regional and national planning and its implications for the states through either an additional task force or some other appropriate means to deal with the question.

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MODEL LEGISLATION ON STUDENT RESIDENCY

Background of Principles and Model Legislation on Student Residency

As a result of a series of questions and requests from a number of states on residency requirements for public institutions of higher education, the Education Commission of the States authorized a study by Dr. Robert F. Carbone, then special assistant to the president of the University of Wisconsin and currently the dean of the College of Education at the University of Maryland, of the status of residency requirements in the various states of the nation. This report was completed in March of 1970 and indicated a chaotic picture involving radical variance from state to state and in some cases from institution to institution within a single state. A series of recommendations were embodied in the report suggesting the need for comprehensive and more compatible residency requirements in the different states. Even before the report was finished, the state of Idaho, utilizing the recommendations in the report, developed and adopted something very close to a model residency law.

A series of court cases in California, Arizona, Wisconsin, and most recently Colorado, in addition to the series of legal decisions relating to residency for welfare purposes, have if anything made the problem more acute. Accordingly, to follow through on the Carbone recommendations and also at the request of the Higher Education Liaison Committee of the Education Commission of the States (consisting of representatives of the major national higher education organizations), the Steering Committee of the Commission authorized the development of a statement of principles for consideration in drafting legislation in connection with student residency and sample model legislation incorporating these principles. The committee appointed to carry out this assignment fully realized that any model legislation could only serve as a guide and would have to be modified to meet unique conditions of the various states. Even within the model legislation as drafted, alternatives are presented (note particularly subsection 4 and footnotes). However, the

principles and the model legislation are offered as suggestions for types of legislation that would meet both the internal problems of consistency and some of the external problems of current court challenges. It should be clearly recognized that the principles are far more important than the specific form the laws in the various states may take.

Principles for Consideration in Drafting Legislation on Student Residency

Statutes, governing or coordinating board policies, or institutional administrative procedures covering the classification of students as residents or nonresidents for tuition purposes in higher education should:

Principle #1: Set basic qualifications for attaining resident status that reflect the basic qualifications of legal age and length of domicile in the state required of voters in that state.

Principle #2: Follow the principle that students who do not meet the basic qualifications for a voter assume the status of their parent(s), guardian, spouse, or the person who is legally responsible for their care and support.

Principle #3: Provide a procedure whereby students who do meet the qualifications for voters can earn resident status even though they may be currently enrolled.

Principle #4: Enable a student of either sex to earn residency by virtue of marriage to a resident of the state; and enable a student to retain residence despite marriage to a nonresident.

Principle #5: Establish a procedure whereby a nonresident student can appeal his classification without initial resort to court action.

Principle #6: Delegate to the governing boards of institutions a degree of flexibility and discretion in granting waivers of nonresident tuition in the case of a given percentage of students who attend under exceptional or extraordinary circumstances.

Principle #7: Authorize governing boards or other state agencies concerned with higher education to enter into reciprocal agreements with similar agencies in other states for the exchange of students across state lines.

Model Legislation on Student Residency

AN ACT

PROVIDING FOR CLASSIFICATION OF STUDENTS FOR TUITION PURPOSES AT INSTITUTIONS OF HIGHER EDUCATION

Be it enacted by the Legislature of the State of _____:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that the state institutions of higher education in the State of _____ shall apply uniform rules, as described in this Act and not otherwise, in determining whether students shall be classified as in-state students or out-of-state students for tuition purposes.

SECTION 2. DEFINITIONS. Wherever used in this Act:

(1) The word "institution" shall mean a college, university, junior college, or vocational technical institute supported partially or entirely by appropriations made by the legislature of this State.[1]

(2) The word "residence" or "reside" shall denote continuous and permanent physical presence within this State, provided that temporary absence for short periods of time shall not affect the establishment of a residence.

(3) The word "domicile" shall denote a person's true, fixed, and permanent home and place of habitation. It is the place where he intends to remain, and to which he expects to return when he leaves without intending to establish a new domicile elsewhere.

First Alternative Subsection (4)

(4) The word "minor" shall mean a person who has not attained the age of 21 years; the words "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody, and earnings of such minor, and who no longer are under any legal obligation to support or maintain such minor.

Second Alternative Subsection (4)

(4) The word "minor" shall mean a person who has not attained the legal age required for voting in elections for state officials in this State; the words "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody, and earnings of such minor, and who no longer are under any legal obligation to support or maintain such minor.[2]

(5) The word "parent" shall mean an unemancipated minor's father; or if he has no father, his mother; or if one parent has custody of the minor, the parent having custody; or if there is a guardian or legal custodian of his person, then such guardian or legal custodian, provided, that there are not circumstances indicating that such guardianship or custodianship was created primarily for the purpose of conferring the status of an in-state student on such unemancipated minor.

(6) Attendance at a school or schools in this state shall be deemed "continuous" if the person claiming continuous attendance has been enrolled at a school or schools in this state as a full-time student, as such term is defined by the governing body of said school or schools, for a normal academic year in each calendar year, or the appropriate portion or portions of such years, thereof, since the beginning of the period for which continuous attendance is claimed. Such person need not attend summer sessions or other such intersession beyond the normal academic year in order to render his attendance "continuous."

(7) The word "his" shall apply to the female as well as the male sex unless the context otherwise clearly requires.

SECTION 3. PRESUMPTIONS AND RULES FOR DETERMINATION OF STATUS.

(1) Unless the contrary appears to the satisfaction of the (registering authority)[3] of the institution at which a student is registering, it shall be presumed that:

(a) The domicile of an unemancipated minor is that of his parent.

(b) The domicile of a married woman is normally that of her husband.

(c) A person does not gain or lose in-state status by reason of his presence in any state or country while a member of the Armed Forces of the United States; provided, that a member of the Armed Forces may obtain in-state status for himself and his dependents by establishing his domicile in this State.[4]

(d) The establishment of a new domicile in this State by a person over the age of 21 years or an emancipated minor has not occured until he has resided in this State for the period of time required for voting for State officials in this State, prior to the opening day of the period of instruction during which he proposes to attend an educational institution in this State.[5]

(e) No emancipated minor or person over the age of 21 years shall be deemed to have gained residence while attending any educational institution in this State as a full-time student, as such status is defined by the governing board of such institution, in the absence of a clear demonstration that he has established domicile in the State.[5]

(f) Once established, a domicile is not lost by mere absence unaccompanied by intention to establish a new domicile.

(2) A person over the age of 21 years or an emancipated minor, domiciled in this State, shall be entitled to classification as an in-state student for tuition purposes.[5]

(3) An unemancipated minor shall qualify for in-state status only if his parent shall have established domicile in the State.

(4) Upon moving to this State, a person over the age of 21 years employed full-time or an emancipated minor so employed, who provides persuasive evidence of domicile, may apply for in-state classification for his spouse and minor children; and, provided that said person is not himself in this State primarily as a full-time student, his spouse and minor children may at once be so classified, and may continue to be so classified so long as said person continues his domicile in this State.[5]

(5) Any person who remains in this State when his parent, having theretofore been domiciled in this State, removes from this State, shall be entitled to classification as an in-state student, so long as his attendance at a school or schools in this State shall be continuous.

(6) The spouse of any person who is classified or is eligible for classification as an in-state student shall likewise be entitled to classification as an in-state student.

(7) An unemancipated minor whose parent is a member of the Armed Forces and stationed in this State pursuant to military orders shall be entitled to classification as an in-state student. The student, while in continuous attendance, shall not lose his residence when his parent is thereafter transferred on military orders.

Alternative to Section 3 (1) (c)
(8) A member of the Armed Forces of the United States, stationed in this State on military orders shall be entitled to classification as an in-state student while on active duty in this State pursuant to such orders.[6]

SECTION 4. REGULATIONS; APPEAL. The (here insert a designation of a statewide agency concerned with higher education)[7] shall adopt uniform and standard rules and regulations applicable to all institutions of higher education in this State now or hereafter established, to determine the residence status of any student, to establish procedures for review of that status, and to establish procedures for appeal of the classification of such student as in-state or out-of-state. Appeal from a final determination denying in-state status to any student may be initiated by the filing of an action in (insert court of appropriate jurisdiction) in the judicial district in which the institution is located. An appeal from the said court shall lie as in all civil actions.

SECTION 5. WAIVER OF TUITION. Where not otherwise restricted or prohibited by law, the governing board of any institution may waive tuition or fees or both in whole or in part and nothing contained in this Act shall be construed as prohibiting or limiting that right.[8]

SECTION 6. QUOTAS, STANDARDS, ETC. Unless otherwise restricted or prohibited by law, an institution or its governing board may establish quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not in-state students for purposes of higher education and nothing contained in this Act shall be construed as prohibiting or limiting that right.

SECTION 7. RECIPROCAL AGREEMENTS. The (here insert a designation of a statewide agency concerned with higher education)[7] may enter into agreements with appropriate agencies and institutions of higher education in other states and foreign countries providing for the reciprocal exchange of students in higher educational institutions to facilitate utilization of public higher educational institutions in this State and such other states or countries. Such agreements may include provisions for waiver or reduction of nonresident tuition for designated categories of students and may include contractual payments to such other state or country, subject to the availability of appropriations. Such agreements shall have as their purpose the mutual improvement of educational advantages for residents of this State and such other states or countries with whom agreements may be made.

SECTION 8. REPEALS. The following statutes are hereby repealed as of the effective date of this Act: (here insert designation of statutes to be repealed.)

SECTION 9. EFFECTIVE DATE. This Act shall take effect on (here insert date).

FOOTNOTES

[1] Modification of this definition may be necessary in some states in order to take into account differing methods of financing an organization of higher education in the various states (e.g.: In some states, community colleges are largely locally supported and residency is defined in terms of community or junior college district). Also, in some states, vocational-technical institutions because of differing methods of financing and/or organization may be excluded.

[2] This alternative utilizing the legal age required for voting in elections for state officials may be preferred by some states. If this alternative is utilized it is necessary to delete the present 3 (1) (d) and 3 (1) (e) and substitute the following:

(d) The establishment of a new domicile in this State by a person who has attained the legal age required for voting in elections for state officials in this State or an emancipated minor has not occurred until he has resided in this State for the period of time required for voting for State officials in this State, prior to the opening date of the period of instruction during which he proposes to attend an educational institution in this State.

(e) No emancipated minor or person who has attained the legal age required for voting in elections for state officials in this State shall be deemed to have gained residence while attending any educational institution in this State as a full-time student, as such status is defined by the governing board of such institution, in the absence of a clear demonstration that he has established domicile in the State.

It is also necessary to amend Sections 3 (2) and (4) by deleting the words "over the age of 21 years" and substituting the words "of the age required for voting in elections for state officials."

[3] Substitute title of appropriate official or office.

[4] See alternative to this section as set forth in Section 3 (8). If alternative is utilized delete this subsection.

Consideration should be given to the availability of service-supported educational programs, which programs pay to eligible servicemen on active duty 75 per cent of the charges of educational institutions for tuition or expenses of off-duty training.

[5] See footnote two (2) above.

[6] See footnote four (4) above. If Section 3 (1) (c) is used delete this subsection.

[7] In states where no such statewide agency exists or where constitutional provisions except some institutions from such statewide agency, modify as appropriate.

[8] States considering adoption of this Act might also want to consider limiting by percentage of total enrollment the number of tuition fee waivers to be granted by any institution.